Public Prosecutor v Mohamad bin Sabu

HIGH COURT (GEORGETOWN) — CRIMINAL APPEAL NO 42LB-34–07 OF 2015
LIM CHONG FONG J
31 MARCH 2017

Criminal Law — Penal Code — s 499 — Accused charged with offence of criminal defamation — Accused offered alternative charge for same offence — Offence allegedly committed by accused in his political speech during public lecture — Sessions court acquitted accused — Whether both charges fatally flawed — Whether learned judge considered evidence adduced by prosecution in entirety — Whether learned judge fell into serious misdirection in concluding that accused's speech concerned only struggle for independence — Whether learned judge erred in fact and law when held that prosecution had not sufficiently proven its case when complainant themselves did not personally hear accused's speech — Whether learned judge rightly acquitted accused without calling for his defence

The accused was charged with the offence of criminal defamation under s 499 of the Penal Code ('the Code') and punishable under s 500 of the same. The accused was also offered an alternative charge for the same offence. The said offence was allegedly committed by the accused in his political speech during a public lecture on 21 August 2011. The accused stated in the said speech, inter alia, in relation to Bukit Kepong film produced by Jins Shamsudin, that the Bukit Kepong police was British police and the attackers were the warriors of independence headed by Mat Indera but the film depicted the attackers of Bukit Kepong police stations as traitors ('the impugned statements'). The said speech was televised in TV3 and reported in the front-page headline of the 'Utusan Malaysia' newspaper under the caption 'Mat Sabu Hina Pejuang' on 27 August 2011 ('the article'). After watching the TV3 news on 21 August 2011 and reading the *Utusan Malaysia* newspaper on 27 August 2011, three complainants lodged police reports against the accused. Pursuant to the investigations carried out by the police, the accused was charged on 15 September 2011. The learned sessions court judge ('the SCJ') found that the said speech was made in the context of the struggle for independence, thus, it was neither defamatory nor offensive. Consequently, the SCJ acquitted the accused from the charges of criminal defamation at the close of the prosecution case, hence the present appeal. The accused submitted that both charges were fatally flawed in that they did not incorporate the essential ingredients of the offence under s 499 of the Code that resulted in depriving the accused of knowing the case he had to face precisely. On the other hand, the prosecution submitted that the learned SCJ did not consider the evidence adduced by the

prosecution in entirety. The prosecution also argued that there was a serious misdirection by the learned SCJ in concluding that the said speech concerned only the struggle for independence. Finally, the prosecution submitted that the learned SCJ erred in fact and law when he found that the prosecution failed to prove its case because the complainants based their complaints on the article or viewing the televised speech of the accused on TV3 without they personally hearing the speech from the accused at the public lecture.

Held, dismissing the appeal and affirming the decision of the sessions court:

(1) The main charge and the alternative charge were deficient in certain material particulars that form the basis of the offence committed by the accused. With regard to the main charge, the precise identity of the person harmed was not disclosed. As to the alternative charge, it was not disclosed that PC37 Constable Marin Abu Bakar Daud, PC8600 Constable Jaafar bin Hassan and PC7625 Yusoff Rono were dead as required by Explanation 1 to s 499 of the Code. Further, the mens rea as specified in the alternative charge would not support the offence because the mens rea must be intending to hurt the feelings (not reputation) of the family since the police officers were all deceased besides also injuring the reputation of those officers (if living). Both charges were defective in substance and not merely form or inadequate particulars. Hence, the charges did not disclose any offence and bad in law (see paras 25 & 28).

(2) The prosecution's contention that the SCJ did not consider the evidence adduced by the prosecution in entirety was misconceived because the SCJ had unequivocally stated in his grounds of judgment that 'Mahkamah telah membuat penilaian secara maksimum ke atas keterangan-keterangan yang dikemukakan oleh pendakwa dan meneliti hujah-hujah kedua-dua pihak' (see para 29).

(3) The court agreed with the SCJ that the thrust of the impugned statements was on the struggle for independence. The impugned statements did not concern the complainants. The complainants or their fathers who defended the Bukit Kepong police station during the incident were neither put to ridicule nor odium by the accused when seen (heard) in the context of struggle for independence. Since the impugned statements did not concern the complainants, it followed that element (ii) of the offence ie the imputation concerned the complainant, was unmet (see paras 31 & 36–37).

(4) The court was satisfied that the learned SCJ merely misquoted Professor Ramlah Adam as the author of the *Pengukir Nama Johor* book and it did not ipso facto become a misdirection. Upon reviewing the chapter on Bajuri Hj Siraj in the *Pengukir Nama Johor* book and the testimony of Professor Emeritus Khoo Kay Kim, the court was satisfied that there were mixed and differing views as well as perceptions amongst historians on

the role of Mat Indera in respect of the Bukit Kepong incident. Consequently, the learned SCJ did not fall into error in so holding in his grounds of judgment. In the final analysis, it could not be conclusively said that Mat Indera was a traitor to the nation (see paras 38–39).

(5) There was no evidence of the televised broadcast before the learned SCJ but he had the opportunity to compare the article with the speech. The learned SCJ found the article to be inaccurate and the court did not disagree with him. In fact, the court found that *Utusan Malaysia* had embellished and sensationalised the speech of the accused in the article particularly the caption 'Mat Sabu hina pejuang negara'. In fairness to the accused, the passages found in the first, second and seventh paragraphs of the article were never uttered by him in the speech and it was doubtful that he intended to injure the reputation or even harm the feelings of the complainants. In the premises, the learned SCJ had properly and correctly held that the prosecution had not sufficiently proven its case when the complainant themselves did not personally hear the political speech. Based on the aforesaid circumstances and the foregoing reasons, the learned SCJ had rightly acquitted the accused without calling for his defence (see paras 40–41 & 44).

[Bahasa Malaysia summary

Tertuduh telah dituduh kerana kesalahan fitnah berunsur jenayah di bawah s 499 Kanun Keseksaan ('Kanun') dan boleh dihukum di bawah s 500 yang sama. Tertuduh juga telah ditawarkan pertuduhan alternatif kerana kesalahan yang sama. Kesalahan tersebut dikatakan telah dilakukan oleh tertuduh dalam ucapan politik beliau semasa syarahan awam pada 21 Ogos 2011. Tertuduh menyatakan dalam ucapan tersebut, antara lain, berkaitan filem Bukit Kepong oleh Jins Shamsudin, bahawa polis Bukit Kepong adalah polis British dan penyerang-penyerang adalah pahlawan kemerdekaan yang diketuai oleh Mat Indera tetapi filem itu menggambarkan penyerang balai polis Bukit Kepong sebagai pengkhianat ('kenyataan yang dipersoalkan'). Ucapan tersebut telah disiarkan di televisyen di TV3 dan dilaporkan dalam tajuk halaman depan akhbar *Utusan Malaysia* di bawah kapsyen 'Mat Sabu Hina Pejuang' pada 27 Ogos 2011 ('artikel tersebut'). Selepas menonton berita TV3 pada 21 Ogos 2011 itu dan membaca akhbar Utusan Malaysia pada 27 Ogos 2011, tiga pengadu telah memuat laporan polis terhadap tertuduh. Berikutan siasatan yang dijalankan oleh polis, tertuduh telah dituduh pada 15 September 2011. Hakim mahkamah sesyen yang bijaksana ('HMS') mendapati bahawa ucapan tersebut telah dibuat dalam konteks perjuangan kemerdekaan, oleh itu, ia tidak berunsur fitnah atau menyakitkan hati. Berikutan itu, HMS telah membebas dan melepaskan tertuduh daripada pertuduhan fitnah berunsur jenayah di penutup kes pendakwaan, justeru rayuan ini. Tertuduh berhujah bahawa kedua-dua pertuduhan telah cacat sangat sehingga tidak membentuk inti pati penting kesalahan di bawah s 499 Kanun yang mengakibatkan tertuduh

terkilan daripada mengetahui kes sebenar yang dihadapinya. Sebalikya, pendakwaan berhujah bahawa HMS yang bijaksana tidak mengambil kira keterangan yang dikemukakan oleh pendakwaan secara keseluruhan. Pendakwaan juga berhujah bahawa terdapat salah arah yang serius oleh HMS yang bijaksana dalam membuat kesimpulan bahawa ucapan tersebut hanya berkenaan perjuangan untuk kemerdekaan. Akhirnya, pendakwaan berhujah bahawa HMS yang bijaksana telah terkhilaf dari segi fakta dan undang-undang apabila beliau mendapati bahawa pendakwaan telah gagal membuktikan kesnya kerana pengadu-pengadu berasaskan aduan-aduan mereka pada artikel tersebut atau dengan menonton uncapan tertuduh di televisyen TV3 tanpa mereka sendiri mendengar ucapan tersebut daripada tertuduh di syarahan awam itu.

Diputuskan, menolak rayuan dan mengesahkan keputusan mahkamah sesyen:

(1) Pertuduhan utama dan pertuduhan alternatif kekurangan dalam butiran penting tertentu yang membentuk asas kesalahan yang dilakukan oleh tertuduh. Berhubung pertuduhan utama, identiti tepat seseorang yang disakiti tidak didedahkan. Berhubng pertuduhan alternatif, ia tidak didedahkan bahawa PC37 Konstabel Marin Abu Bakar Daud, PC8600 Konstabel Jaafar bin Hassan dan PC7625 Yusoff Rono telah meninggal dunia sepertimana dikehendaki oleh Penjelasan 1 kepada s 499 Kanun tersebut. Selanjutnya, mens rea seperti yang dinyatakan dalam pertuduhan alternatif tidak menyokong kesalahan itu kerana mens rea hendaklah berniat untuk menyakitkan hati (bukan reputasi) keluarga sehingga pegawai-pegawai polis itu kesemuanya meninggal dunia selain daripada menjejaskan reputasi pegawai-pegawai yang hidup (jika masih hidup). Kedua-dua pertuduhan adalah cacat secara substans dan bukan hanya membentuk atau butiran yang tidak mencukupi. Justeru, pertuduhan-pertuduhan tersebut tidak menzahirkan apa-apa kesalahan dan tidak baik dari segi undang-undang (lihat perenggan 25 & 28).

(2) Hujah pendakwaan bahawa HMS terebut tidak mengambil kira keterangan yang dikemukakan oleh pendakwaan secara keseluruhan telah disalah tanggap kerana HMS tersebut telah menyatakan dengan tegas dalam alasan penghakiman beliau bahawa 'Mahkamah telah membuat penilaian secara maksimum ke atas keterangan-keterangan yang dikemukakan oleh pendakwa dan meneliti hujah-hujah kedua-dua pihak' (lihat perenggan 29).

(3) Mahkamah bersetuju dengan HMS tersebut bahawa teras kenyataan yang dipersoalkan itu adalah berhubung perjuangan untuk kemerdekaan. Kenyataan yang dipersoalkan itu bukan berkenaan pengadu-pengadu. Pengadu-pengadu atau bapa mereka yang mempertahankan balai polis Bukit Kepong sepanjang kejadian itu tidak

diejek atau dibenci oleh tertuduh apabila dilihat (didengar) dalam konteks perjuangan untuk kemerdekaan. Oleh kerana kenyataan yang dipersoalkan itu bukan berkenaan pengadu-pengadu, adalah diikuti bahawa elemen (ii) kesalahan iaitu butiran berkenaan pengadu, tidak dipenuhi (lihat perenggan 31 & 36–37).

(4) Mahkamah berpuas hati bahawa HMS yang bijaksana hanya tersalah petik Profesor Ramlah Adam sebagai penulis buku *Pengukir Nama Johor* dan ia tidak ipso facto menjadi satu salah arah. Setelah meneliti bab berhubung Bajuri Hj Siraj dalam buku *Pengukir Nama Johor* dan testimoni Profesor Emeritus Khoo Kay Kim, mahkamah berpuas hati dengan peranan Mat Indera berkaitan kejadian Bukit Kepong. Berikutan itu, HMS yang bijaksana tidak terkhilaf apabila membuat keputusan dalam alasan penghakiman beliau. Dalam analisis akhir, ia tidak boleh dikatakan secara konklusif bahawa Mat Indera adalah seorang pengkhianat kepada negara (lihat perenggan 38–39).

(5) Tiada keterangan berhubung siaran televisyen di hadapan HMS yang bijaksana tetapi beliau berpeluang untuk membandingkan artikel tersebut dengan ucapan itu, HMS yang bijaksana mendapati artikel tersebut tidak tepat dan makamah bersetuju dengan beliau. Bahkan, mahkamah mendapati bahawa *Utusan Malaysia* telah menghiasi dan mensensasikan ucapan tertuduh dalam artikel tersebut khususnya kapsyen 'Mat Sabu hina pejuang negara'. Demi keadilan kepada tertuduh, petikan-petikan yang terdapat dalam perenggan-perenggan pertama, kedua dan ketujuh artikel itu tidak pernah diucapkan olehnya dalam ucapan itu dan ia diragui bahawa dia berniat untuk menjejaskan reputasi malah menyakiti perasaan pengadu-pengadu. Dalam premis ini, HMS yang bijaksana telah sewajar dan betul memutuskan bahawa pendakwaan tidak membuktikan secukupnya kesnya apabila pengadu-pengadu sendiri tidak mendengar sendiri ucapan politik itu. Berdasarkan keadaan dan sebab-sebab berikut, HMS yang bijaksana telah sewajarnya membebaskan tertuduh tanpa memanggil untuk pembelaannya (lihat perenggan 40–41 & 44).]

Notes

For a case on s 499, see 4(2) *Mallal's Digest* (5th Ed, 2015) para 2677.

Cases referred to

Aw Yang Kee Chuan lwn Pendakwa Raya [1992] 1 CLJ Rep 398, HC (refd)
Balachandran v PP [2005] 2 MLJ 301, FC (folld)
Binaan Sentosa Sdn Bhd v Ng In Kun & Anor [2011] MLJU 897; [2012] 1 CLJ 232, HC (refd)
Datuk Hj Shabudin Yahaya & Ors v YB Dr Afif Bahardin [2016] 1 LNS 291, HC (distd)
Goh Ming Han v PP [2015] 3 MLJ 781; [2015] 3 CLJ 17,CA (refd)

Mohamed Sabu v PP [2013] 2 CLJ 168, HC (refd)
Mohd Yusri bin Mangsor & Anor v PP and another appeal [2014] 4 MLJ 875, CA (refd)
Parwari v Emperor 49 Ind Cas 855; AIR 1919 Allahabad 276, HC (refd)
PP v Ab Latif Muda [2014] 1 LNS 1450, HC (refd)
PP v Chung Tshun Tin & Ors [2008] 1 MLJ 559, HC (refd)
PP v Mohd Radzi bin Abu Bakar [2005] 6 MLJ 393; [2006] 1 CLJ 457, FC (consd)
Ravindran a/l Ramasamy v PP [2015] 6 MLJ 509; [2015] 3 CLJ 421, FC (refd)
Ti Chuee Hiang v PP [1995] 2 MLJ 433; [1995] 3 CLJ 1, SC (refd)
Uthayakumar a/l Ponnusamy v PP [2003] 5 MLJ 433, HC (refd)

Legislation referred to

Criminal Procedure Code ss 153(1), 154, 156, 182(A), 316
Indian Penal Code [IND] ss 499, 500
Penal Code ss 499, 500, 503, 506

Razali bin Che Ani (Pulau Pinang State Legal Advisor Office) for the appellant.
Mohamed Hanipa bin Maidin (Aminuddin bin Zulkipli, Nasar Khan bin Mirbas Khan, Nadzratun Naim bt Hammad Azizi and Sharifah Nur Asmaa' bt Syed Azman with him) (Amin Amirul & Partners) for the respondent.

Lim Chong Fong J:

INTRODUCTION

[1] This is an appeal brought by the public prosecutor against the trial decision of the sessions court dated 8 July 2015 acquitting the accused from the charges of criminal defamation at the close of the prosecution case. I will address the appellant and respondent as the prosecution and accused respectively.

[2] The charges read as follows:

> Pertuduhan Utama
>
> Bahawa kamu, pada 21 Ogos 2011 jam antara 10.00 malam dan 12.00 tengah malam di hadapan Pusat Asuhan Tadika Islam (PASTI) Al-Fahmi, Markas Tarbiyah PAS, Padang Menora, Tasek Gelugor, Pulau Pinang, telah memfitnah anggota-anggota polis dan keluarga mereka yang mempertahankan diri dalam serangan pengganas komunis di Balai Polis Bukit Kepong pada 23 Februari 1950, dengan membuat tohmahan, dengan perkataan yang dituturkan, di dalam ucapan kepada orang ramai sepertimana yang digariskan dalam *Lampiran A*, dengan mengetahui bahawa tohmahan tersebut akan merosakkan nama baik anggota polis dan keluarga mereka; dan oleh yang demikian kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah Seksyen 500 Kanun Keseksaan.

Pertuduhan Pilihan

Bahawa kamu, pada 21 Ogos 2011 jam antara 10.00 malam dan 12.00 tengah malam di hadapan Pusat Asuhan Tadika Islam (PASTI) Al-Fahmi, Markas Tarbiyah PAS, Padang Menora, Tasek Gelugor, Pulau Pinang, telah memfitnah anggota-anggota polis iaitu PC 37 Konstabel Marin Abu Bakar Daud, PC 8600 Konstabel Jaafar bin Hassan dan PC 7645 Yusoff Rono serta ahli keluarga mereka, yang mempertahankan diri dalam serangan pengganas komunis di Balai Polis Bukit Kepong pada 23 Februari 1950, dengan membuat tohmahan, dengan perkataan yang dituturkan, di dalam ucapan kepada orang ramai sepertimana yang digariskan dalam *Lampiran A*, dengan mengetahui bahawa tohmahan tersebut akan merosakkan nama baik ketiga-tiga anggota polis tersebut dan ahli keluarga mereka; dan oleh yang demikian kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah Seksyen 500 Kanun Keseksaan.

Hukuman: Sekiranya kamu didapati bersalah dan disabitkan dengan kesalahan, kamu boleh dihukum penjara selama tempoh yang boleh mencapai 2 tahun, atau dengan denda, atau dengan kedua-duanya.

Bertarikh pada 15 September 2011.

Dengan kuasa Pendakwa Raya

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(MOHAMAD HANAFIAH BIN ZAKARIA)

Timbalan Pendakwa Raya

[3] The annexure to the *pertuduhan utama* ('main charge') and *pertuduhan pilihan* ('alternative charge'), to wit: *lampiran* A ('charge annexure') thereto reads as follows:

Assalamualaikum Warahmatullahiwabarakatuh ...

Ketua Dewan Ulama PAS, juga Pesuruhjaya PAS Negeri Johor, Ustaz Halim Man, Timbalan Pesuruhjaya, seluruh ahli-ahli Jawatankuasa Peringkat Perhubungan Negeri, seluruh Jawatankuasa PAS kawasan Tasek Gelugor, seluruh Jawatankuasa Pemuda Muslimat dan seluruh alim ulama, rakan-rakan dan juga daripada Parti Keadilan, para hadirin hadirat, muslimin muslimat yang dihormati sekalian.

Alhamdulillah, sekali lagi kita dapat bertemu pada malam ini, insyallah lepas raya ini, boleh berdiri elok la kot ... Hahhhh, dah seminggu saya saya buang kerusi roda, sekarang dah boleh pakai tongkat, haa, jadi lepas raya ni jadi Pak Maun laa ... Boleh buang tongkat ... Itu adalah dalam perjuangan ini nasib saya macam tuh nak buat macam mana, haa, kalau kita nak ikut, pasai apa tak kenal semua orang, kita redha dengan apa yang Allah uji kita dalam perjuangan ini. Saya sendiri ISA kena dua kali, bicara kes mahkamah ini, setakat la lima kes, menang dah empat! Tinggal satu gi, hat nak mai ke depan kita nak saman tu belambak lagi, haa, jadi saya hadapi nasib tu, dalam perjuangan ini. Nak buat macam mana, kalau ditahan dibalai polis, lokap tu selalu dah. Cuma kita, rasa apa yang dilalui itu, adalah perkara yang kadang kalanya terpaksa untuk kita membuat pembaharuan politik, tentulah melalui perjuangan, bukan melalui hamparan permaidani merah. Hadirin yang dihormati sekalian, sebelum saya pergi kepada perkara-perkara yang nak saya sampaikan, saya

lancar dulu kutipan derma pada malam ini untuk tuan-tuan membantu perjuangan kita. Para petugas diminta untuk bertemu dengan mereka yang hadir malam ini, Alhamdulillah bulan Ramadhan ramai begini hadir, dalam majlis penerangan kita. Petugas bertemu dengan setiap mereka yang hadir, ini malam sepuluh terakhir, sebarang sedekah jariah kita untuk perjuangan, menegakkan keadilan menentang kemungkaran akan mendapat ganjaran disisi Allah SWT. Apa petugas bertemu dengan setiap mereka yang hadir. Saya akan cuba terus memberi ucapan.

Hadiran hadirat yang dihormati sekalian, saya di tempat lain, saya tak terangkan hal kemalangan yang saya lalui, tapi ini kampung saya, jarak. Jadi yang ada ni kawan-kawan, adik-beradik. Saya terangkanlah sikit hadirin sekalian. Dalam televisyen itu, Pengarah Keselamatan Dalam Negeri berbohong! Dia tunjukkan dengan *touch light* lalu dia kata tengok kereta Pajero tak langgaq pun Mohamad Sabu. Saya buat repot polis 14 Julai, Pengarah Keselamatan Dalam Negeri buat kenyataan 22, dia tak baca repot polis saya. Saya dilanggar oleh kereta polis jenis Waja, bukan Pajero! Kemudian dia kata saya terjatuh langgar divider, lagi muhong! Kereta polis yang tolak kepala lutut saya! Kemudian dia kata saya berlakon dok atas kerusi roda, dia bukan doktor! Lagi dia bercakap, lagi dia bohong, sepatah tak mai mintak maaf sampai hari ni. Dan dia berbohong dalam televisyen, seluruh rakyat Malaysia dengar, saya jawab dalam majlis ceramah, surat khabaq Harakah, surat khabaq Keadilan, tapi hadirin sekalian oleh kerana mereka berbohong terlalu banyak sekarang ni, cakap polis pun orang tak percaya ...! Betui ka dak ...? Tambah cakap Najib lagi muhong! Haa, tuu laa ... siakap senohong gelama ikan duri, suka cakap bohong lama-lama jadi menteri ...

Hadirin sekalian, saya sebut semasa saya dibawa ke hospital *General Hospital* berada dalam Lokap Jinjang, nak ambil wudhu', nak pergi bilik air, nak buat statement polis, nak cop jari, semua dipapah oleh polis dua orang kiri dan kanan sebab tak boleh jalan, dan polis yang papah saya tu ucap terima kasihlah ... Mereka khidmat sungguh ... saya nak gerak ja, dia tau saya takleh jalan kena angkat, haaa ... sampailah dibebaskan jam sepuluh malam, saya letak diletakkan di hadapan lokap, orang lain semua jalan kaki keluaq, saya tak keluaq, kereta masuk ambik ... haaa, tu pada hari Sabtu. Hari Isnin saya pergi ke doktor pakar, doktor pakar, ha, KPJ Hospital dekat rumah di Shah Alam. Dia cek didapati ligamen orang panggil urat belakang lutut terkoyak, kena buat pembedahan. Dia nak buat pembedahan hari tu, dia tak boleh buat sebab darah saya caiq, dok makan desprin pasai ada hal jantung. Dia kata kena berhenti makan desprin empat hari, mai sini kita nak buat pembedahan. Hari Jumaat 15 haribulan, ha ... masuk bilik pembedahan pukul dua petang, pukul empat keluar dari bilik pembedahan iaitu dibubuh satu skru dua inci setengah dalam lutut ni, jadi saya suruh doktor bubuh skru sebab saya nak berlakon.

Hadirin sekalian, pelaq sungguh puak-puak ni, buat main sampai macam tu! Hadirin sekalian, lepas bubuh skru tu, tiga hari kemudian barulah boleh menapak dan Alhamdulillah sekarang dah boleh berjalan dah, cuma naik tangga turun tangga tu kenalah bantuan tongkat sikit. Alhamdulillah, lepas raya ni kembali pulihlah kot ... boleh berjalan dan boleh bekerja lagi dalam parti dalam perjuangan ini.

Hadirin hadirat yang dihormati sekalian, oleh kerana dia tak minta maaf sampai hari ni, lepas ni akan diikutilah dengan tindakan mahkamah. Saya sepanjang dalam perjuangan ini tak berniaga, jadi nak kaya lepas ni dengan samanlah! Haa ... insyallah peguam-peguam pun kata kami banyak hat nak ambil kes saya ni, hat kes

pecah cermin kereta tu, menang di peringkat Juru, kemudian pihak pendakwa buat rayuan di Mahkamah Tinggi, 5 haribulan Ogos bulan puasa ni jugak, Hakim Mahkamah Tinggi mengatakan keputusan Mahkamah Majistret Nibong Tebal betul iaitu saudara Mohamad Sabu ni perlu dibebaskan dan tak perlu membela diri, kita tengoklah, kalau keadaan sesuai, peguam kita akan dakwa pulak, kita akan tuntut pecah cermin dan sebagainya. Itu serahlah pada peguam hadirin sekalian, haa ... Hadi saya terima kasihlah pada doa tuan-tuan semua, sebab saya banyak lalui kes-kes di mahkamah. Haa ... Dato Seri Anwar teruk lagi, tapi saya ni peringkat yang agak kawan kata banyaklah jugak ada pi kes-kes mahkamah. Kita jangan bimbanglah, kita takut pun mati, berani pun mati.

Hadirin yang dihormati sekalian, sekarang pemikiran rakyat sudah mula berubah, mereka tidak lagi diawal merdeka dulu, haa ... Sekarang ni kita ambil suasana nak sambut merdeka, kita tengok takda orang bubuh bendera di kereta. Ada setengah kereta tu dia bubuh dekat dua ratus bendera, tu hat jenis masuk ayaq dalam kepala! Ha, hat jenis tu ada tapi orang biasa saya tak nampak boh. Sebab apa? Ia tak berasa sambut merdeka, sambut merdeka seolah-olah perayaan UMNO. Betul ke dak? Sepatutnya tokoh perjuangan kemerdekaan kena masuk dalam televisyen, kalau nak bubuh Tengku Abdul Rahman, Dato Onn tak pe lah, kena letak jugak Dr Borhanudin! Kena letak jugak Ustaz Abu Bakar Al Bakhir! Kena letak jugak Dato Ahmad Boestaman kena letak jugak Dato Ibrahim Yakop! Kena letak jugak perjuangan-perjuangan seperti Mat Kilau dan sebagainya. Ini penentang-penentang British. Tapi bila mereka Tengku Abdul Rahman, Dato Onn, Tengku Abdul Rahman, Dato Onn, kalau gitu UMNO lah raya! Betul ke dak? Di negeri orang lain sambut merdeka rakyat ambil bendera letak di pintu rumah masing-masing kalau kita pergi Indonesia dan di Thailand, tak kira parti politik pembangkang ke kerajaan ke belum merdeka ini rakyat yang menyambutnya.

Di Malaysia ni, kita tak rasa sambut merdeka rakyat sambut, macam UMNO sambut. Bahkan berlaku berapa tahun lepas di mana Majlis Daerah Raub minta supaya semua parti politik buat tolakan hari merdeka ... Maka PAS di Raub itu kebetulan ahlinya banyak bekas-bekas tentera berletihlah berkawad, elok tak kiralah berkawad puak-puak tentera banyak daripada PAS ni nak sambut merdeka di majlis perbandaran sehari sebelum merdeka? Mai surat! PAS tak boleh terlibat dalam sambut merdeka. Ha ...! Ni hadirin sekalian yang berlaku. Ertinya sambut merdeka ni seolah-olah kepunyaan UMNO. Sebab itu kita lihat tulisan-tulisan blog-blog kebelakangan ini, anak-anak muda kita, em ... Sambut buat pa? Bendera pun dia kata bukan bendera merdeka, lagu Negaraku pulak lagu Hawaii, kemudian diterjemahkan lagu jadi Terang Bulan di Indonesia, kemudian jadi lagu Negaraku.

Mula-mula saya ingat, budak-budak ni melawak, hari tu anak saya tunjuk dia bukak Youtube dia kata ayah dengaq ... Inilah lagu Terang Bulan di Indonesia, ni lagu Negaraku hundred percent serupa ...! Ertinya lagu ni lagu yang diambil dari lagu Terang Bulan bukan lagu patriotik apa-apa pun. Sebab itu kita harap ... Takpa lah dah gunapakai nak buat macam mana tapi kita lihat cara yang dibuat itu, memang banyak yang tak kena ...

Bila hari merdeka nanti tunjuk filem Bukit Kepong, Bukit Kepong polis itu polis British, hat serang Bukit Kepong tu lah pejuang kemerdekaan, ketuanya Mat Indera, Melayu ...! Tetapi semua sejarah itu ditutup, Jins Shamsudin buat filem, Jins Shamsudin tu UMNO, cerita Bukit Kepong hat serang balai polis tu penjahat, polis tu

polis British sebelum merdeka, Negara kita di perintah oleh British tapi dibuat filem hero yang pertahan balai polis, hat serang tu pengganas, tak pa! Ha, Mat Indera ketua penyerang balai polis tu, dan akhirnya dia dihukum gantung di jail Taiping.

Begitulah jugak Tok Janggut, Tok Janggut ni lawan British tapi, sebelum British nak, nak bunuh dia, dia menghasut Sultan Kelantan untuk mengistiharkan Tok Janggut sebagai penderhaka, bila istihar Tok Janggut sebagai penderhaka, barulah Tok Janggut di hukum gantung di Pasir Putih Kelantan, semua sejarah Negara kita mohong, bohong belaka, dulu kita dok mengaji di sekolah jarak, rupanya cikgu tu dok bohong kita, cikgu tu pulak Kementerian Pelajaran mohong dia.

Jadi dok lawan mohong la tuan-tuan sekalian, tapi sejarah kemerdekaan, tak kena tuan-tuan sekalian, sebab itu kita tengok, pegawai British jadi pejuang kemerdekaan, lawan British jadi jahat, siapa pegawai British, Dato Oon, Tuanku Abdul Rahman, tu pegawai British! Hat lawan British, hat tu pulak jadi penganas, Bakar Fakeh pengganas, Doktor Baharuddin pengkhianat, kemudian, Rashid Mydin komunis, semua hat lawan British jahat, hat sokong British hero! Ini Pelik bin Ajaib, hat lawan British tu la pejuang kemerdekaan, tak pa lah kita ambil alih Malaysia esok, kita ubah balik sejarah ni, boleh dak? Bukan kita nak memihak kepada sesiapa, tapi hak betui, haa ... *Kalau kemerdekaan di tangan Tuanku Abdul Rahman,* ya ... *Tapi perjuangan kemerdekaan bukan mereka!* Pejuang-pejuang kemerdekaan kebanyakannya merengkok dalam penjara, di antara mereka lari menyelamatkan diri lari ke Indonesia termasuklah Ibrahim Yaakop, kerana nak di tangkap oleh pihak British, hadirin yang dihormati sekalian, begitulah juga hal pembangunan, pembangunan kalau dulu memanglah UMNO kempen, dia sebut cukup mudah. Dulu mana ada jalan, la jarak nak pi Lunas 15 minit boleh sampai. Siapa buat jalan ni? ... UMNOoooo ... Ha, ya senang macam tu ... Ceramah zaman tu zaman Plastine, zaman Dato Mat Said, dulu ni, yang mai ceramah gitu kita nganga dengaq ahhh ... Tali ayaq jarak tu sapa buat? Perikatannn ... Ha, ni zaman-zaman begitu. Sekarang hadirin sekalian, ceramah dan penerangan macam tu tak boleh, rakyat nak pembangunan. Rakyat nak pembaharuan, yang rakyat tak mahu, penyelewengan dan rasuah. Haa ... Ini yang rakyat tak mahu, rasuah tak mau, penyelewengan tak mau, kalau harga sekolah 20 juta, buat dengan 20 juta, kenapa jadi 30 juta??? Kenapa perlu mark up price ... Naikkan harga sepuluh juta ... Pergi dekat sapa wang ini?? Haa ... Ini yang rakyat tak mau. Sekolah rakyat mau dak?? Mauu ... Makmal komputer rakyat mauu?? Tapi kenapa buat rakyat anak murid. Belum masuk dah runtuh. Stadium rakyat mau. Nak tengok bola, nak bersukan tapi kenapa stadium bina tak sampai setahun runtuh. Pasai apa jadi macam tuu?? Sedangkan kita tengok bangunan, kita tengok tu padang kota, bangunan tuh 80 tahun, seratus tahun sampai la dok kukuh. Bank-bank dok pakai, British buat dulu, bangunan buat lepas merdeka ni, retak pecah kerana apa? Rasuah dan penyelewangan berlaku. Ini perubahan pemikiran rakyat, sebab itulah dalam satu forum anjuran Karangkraf, Sinar Surat Khabar Sinar di Shah Alam baru-baru ini yang hadir adalah Datuk Ambiga, seorang lagi Saifudin Abdullah, Timbalan Menteri daripada UMNO, kemudian seorang lagi Datuk Wan Ahmad daripada SPR dan seorang lagi Professor Sham Shamsul Amri yang rambut panjang tu, Professor Shamsul Amri menyatakan BN sekarang bukan menghadapi rakyat seperti tahun 60-an, rakyat telah berubah dan rakyat telah faham apa dia pembangunan dan sebagainya. Maka BN menghadapi perhakisan sokongan rakyat kalau penyelewengan terus berlaku. Ini diantara petikan kata-kata Professor Shamsul Amri. Beliau menyatakan masalah

yang UMNO hadapi sekarang ini ialah UMNO berkempen ditahap lama. Pemikiran rakyat telah berubah ke tahap baru, mereka masih lagi ditakuk lama iaitu soal siapa buat pembangunan, siapa itu semua sedangkan pemikiran rakyat telah maju ke hadapan. Ini kata Professor Shamsul Amri.

Hadirin yang dihormati sekalian, macam dulu kita masuk pilihanraya, bila kita kata takdirrrr ... Nak buat camna, kita dapat pengundi banyak tuu ... Sekarang kita akui undi kita tak cukup, tapi kenapa tak cukup??? Diantaranya kita tak boleh beri penerangan kepada orang ramai. Media tidak adil. Ini tuntutan yang dituntut kebelakangan ini soal keadilan media.

Contohnya Pengarah Keselamatan Dalam Negeri mengatakan saya tak dilanggar oleh Pajero. Takdak kemalangan. Dia bohong! Saya takdak peluang untuk jawab dalam televisyen. Kalau saya boleh jawab, saya kata saya dilanggar hari tu oleh Waja. Maka rakyat dapat dua penerangan. Satu penerangan Pengarah Keselamatan Dalam Negeri, satu penerangan saya, maka rakyat bebas untuk buat pertimbangan. Sekarang, rakyat yang boleh buat pertimbangan rakyat yang mari dengar ceramah malam ni, sebab dia dah tengok televisyen, dia dengar penerangan saya. Macam mencari rakyat di Ijok, macam mana rakyat di Selama, rakyat Parit, Pahat, Batang Tambun, ahhhhh ... Lata Bayu, Cerok Kudung, Kupang, Merbau Kudung, ka pa semua, ayaq melintas, yang tak mai dengaq dari kalangan kita. Dia percayalah pada apa yang TV bagitau. Disinilah berlaku ketidak adilan media. Bukan kita hendak apa yang kita cerita dikira percaya, kita juga nak apa yang pemerintah cerita, mestilah percaya. Yang pentingnya, kedua-dua dapat peluang, memberi keterangan. Inilah keadilan media yang kita tuntut. Misalnya, mereka menyerang sekarang ni, PAS alat DAP naik sepanduk merata kampung. Kalau UMNO kalah DAP lah yang menang. Sedangkan di Terengganu, DAP satu kerusi pun tak bertanding?? Kalau jadi PAS lawan UMNO, adakah Keadilan satu dua, tu pun Melayu. Tapi kalau tengok sepanduk, kalau UMNO kalah DAP menang. Setengah-setengah orang kampung yang tak paham, dia kata habislah kalau UMNO kalah. Apa nak jadilah Melayu ni? Inilah kata Professor Shamsul Amri iaitu bila BN masuk bertanding di Takok dengan memperbodohkan rakyat. Sedangkan rakyat Bandar, rakyat internet, rakyat blog dah mula mendapat maklumat lain. Oleh itu, Barisan Nasional bertahan. Undi di kampung? Di pendalaman, tidak lagi di Bandar-bandar. Saya sebutlah kalau di sebelah bandar sekarang ni, Shah Alam ka, Petaling Jaya ka, sebut UMNO pun orang geli. Ragam muda, kamu ni UMNO ka? Eeeii ... Dok geli dengar, tapi kalau jarak dok sebut UMNO, dia tak geli lagi. Tapi orang yang di Bandar, dia tau sejarah, dia baca internet, dia tengok laporan semua. Rupanya banyak berlaku pembohongan sejarah.

Hadirin yang dihormati sekalian, sebab itu tuntutan kita diatas keadilan media ini. Kita tak dapat lagi terlalu pincang, terlalu pincang. Kita tengoklah menjelang bersih. Allah. Saya dipanggil oleh Bukit Aman, oleh pemimpin polis yang tinggi-tinggi. Ketua Polis Negara, timbalan dalam cakap dan mereka sambut saya dengan mesra saya akui. Namun tersebutlah diantaranya dia sebut, nanti ramai orang datang. Nanti meniaga tak laku. Saya kata pelik? Peniaga tak suka orang ramai. Peniaga yang tak suka orang ramai datang. Hantar mereka berniaga di Hulu Tembeling, Hulu Tembeling tau??? Daripada Jerantut tu kena naik bot enam jam ohhh ... Haa ... Pi meniaga dalam tu ... Ni tuan-tuan semua ni orang meniaga, betui tak betui suka orang ramai-ramai?? Pelik ka tak? Dok interview dalam televisyen tu, tak suka orang ramai datang, nanti perniagaan saya merosot. Eh, pelik!!! Dia kata

nanti masuk pulak dalam kedai ... Dia kata masuk dalam kedai, kerna hangpa sembuq gas pemedih mata ... Kalau sembuq gas pemedih mata, bukan takat kedai, kandang babi pun kami masuk. Kena gas pemedih mata. Kalau babi lari, belum tentu babi dengan kambing, serupa laju lari. Yang polis pun diam, nak tergelak pun ada depa tu ... Depa tak berani gelak bos ada. Jadi beri jawapan yang tak logik tuan-tuan sekalian. Ahhh ... jadi kita tuan-tuan sekalian, kemudian kita saya takut kenapa kumpulan yang nak mandi darah. Sorang pun tak diambil tindakan. Kuat sikit. Kamu sanggup bermandikan darah, ehhh kita bukan nak pi perang, hang nak pi mandi darah dengan sapa? Tapi hari 9 haribulan bersih tu, Omar Din hadir tauuu!!! Tuan-tuan tak nampak sebab dia meresap jangan anggap dia tak hadir. Dia hadir tapi dia meresap. Dia banyak tuliskan perkara-perkara yang tak logik. Kemudian ini pertubuhan haram bersih, tiba-tiba Yang Dipertuan Agong jumpa takkan Yang Dipertuan Agong jumpa pertubuhan haram, boleh kah masa askar dan polis kita dok berlawan dengan Parti Komunis Malaya dulu sebelum tandatangan perjanjian damai tahun 89, bolehkah Yang Dipertuan Agong bertemu dengan Parti Komunis Malaya???? Boleh kaa???? Tak boleh ... Tetapi bersih Yang Dipertuan Agong bertemu dan orang yang bertemu itu pulak Datuk S Ambiga, bekas pengerusi peguam, Datuk A Samad Said, sasterawan Negara. A Samad Said inilah penggerak utama dalam perhimpunan bersih. Kalau tuan-tuan nak tahu, maka dua, tiga hari amaran macam-macam kalau tak bersurai tembaklah! Apapun amaran masa itu beberapa orang dah goyang nak jadi, tak jadi, nak jadi, tak jadi!! Datuk A. Samad Said kami tanya dia macam mana Datuk?? Jadi ka tak perhimpunan ni? Jangan lihat cakap saya ... Lihat tindakan saya ... Datuk A Samad Said dia bercakap bilapun dia bersajak ... Saya dok depan dia pun, saya sebut Datuk ni rasa nak ajak bini dia pi tidoq pun dia sajak dulu, hari sudah larut malam, betapa dingin rasanya kulit ini, buat apa kita berbual kosong disini, kan lebih baik pergi beradu ... Kita takdalah cakap jarang ja ... Jom tidoq laa ... anak semua tidoq dahh ... La hai tidoq gu mana??? Hang jenis tidoq macam kita ja la ...

Hadirin sekalian, A Samad Said dan hari perhimpunan itu, saya diberitahu juga sebab perhimpunan baru ini. Saya tak terlibat. Kenapa apa tak terlibat? Dah kena tangkap awal ... Depa langgaq awal 1250 cekup dahhhh ... Ahh jadi tak tau lah A Samad Said berjalan sampai di stadium ... Berjalan sampai ke pintu istana ... Dia tak takut bila orang tembak gas. Dia nih janggut dia tutup hidung ... Janggut dia sampai pusat tuh ... Saya masa itu keluar yang pentingnya beliau punyai semangat yang cukup cekal terutama dia amat tidak setuju dengan kerajaan BN dalam segi menjaga bahasa PPSMI dia menjadi hero hantar memorandum supaya mansuhkan pengajian dalam Bahasa Inggeris sebab apa pikiran dia dan cendekiawan melayu yang lain, kalau berterusan program itu, Bahasa Melayu akan lupus, 15 tahun 20 tahun lagi di Malaysia ini. Ini bukan kata kajian kita. Orang jarak ni ... Ini kajian dibuat para professor. Tiba-tiba UMNO kata tarik pembela bangsa tak cukup dengan UMNO diswastakan pulak kepada perkasa ... Ahhh padahal cendekiawan melayu berarak kena gas dan sebagainya. Minta Bahasa Melayu dipertahankan ketuai diantaranya Datuk A Samad Said. Sekarang di boikot semua program kerajaan. Satu program kerajaan di Kundang, dibayar tambang elaun adalah duit. Sekarang dia boikot semua. Orang tanya dia macam mana duit dia ada. Dia ada akaun bank 96 ringgit. Saya jamin dia kata cukup untuk hidup. Ini dia Datuk A Samad Said, dia kurus. Kalau dimakan teh tarik tu, setengah gelas ja, tapi bukan soal itu. Ini semangat perjuangan tua hadirin sekalian, yang sayangkan bangsa dan yang

sayangkan agama. Saya kagum, dengan Datuk A Samad Said. Hadirin yang dihormati sekalian, kita lihat, kenapa rakyatnya hendak kalah ka menang pilihanraya nombor dua, yang penting kita nak pilihanraya yang adil dan bersih. Ini tuntutan anak muda sekarang. Ni dia lagi kita lihat. BN bertapak dimana? Dia menang 45 kerusi parlimen kerana undi FELDA, 25 kerusi parlimen kerana undi pos. Kenapa lak undi jadi gitu? Kita tak boleh masuk. Tanya Dr Mahboh kita pergi ceramah di kawasan FELDA, polis jadi pekerja UMNO. Dia mengawal, kepung kita tak boleh bersyarah. Dia datang. Masuk dalam markas ahli PAS hardcore, ahli Keadilan hardcore. Yang tuh tak perlu berceramah, betul kah? Takkan peringkat pemimpin rakyat ini nak perlu dengaq ceramah? Untuk menentukan dia nak undi sapa, tak perlu. Yang kita perlu orang ramai. Orang ramai tak boleh dengaq ceramah kita di FELDA. Polis jadi tentera UMNO, bukan jadi keselamatan rakyat. Tapi jaga keselamatan UMNO. Saya sebut di Bukit Aman. Depan Ketua Polis, Timbalan Ketua Polis Negara dan pemimpin-pemimpin tinggi polis. Saya kata, polis sekarang dilihat menjaga UMNO, bukan menjaga rakyat. Hangpa ingat aku kata depan hangpa ni ha ... Lain-lain atas ni dalam parlimen menteri nuuu ... Aku jerkah gitu ja Zainudin Mydin ... Aku jerkah gitu ahh ... Pasai dia kata apa?? Mementingkan sukan Negara lebih penting daripada sembahyang. Haa ... Aku ... Kalau hangpa maki PAS takpa. Maki Islam lompat selalu lahh ... Kalau dia tak tarik, saya merudom ... Sampai ke peringkat speaker perlimen ... Ahkirnya, dah tertangguh 20 minit. Maksud gitu dia mintaklah Zainudin Mydin tarik balik ... Ya ... Ia mementingkan nama Negara sampai tak perlu sembahyang ... Dia tarik balik barulah saya duduk ... Haaa ... Ni yang jenis ni pusar dua ni ketegaq ... Haaaaa ... Hadirin sekalian, jadi saya sebut. Tapi beleum terlewat. Pasukan polis belum terlewat untuk buat perubahan. Supaya mereka menjaga rakyat ... Menjaga undang-undang ... Menjaga perlembagaan bukan menjaga UMNO. Sebab UMNO kalah nanti ... Polis akan terus bertugas dibawah pemerintah baru ... Haaa ... ini yang kita ingatkan polis, polis pun banyak datang malam ni ... sebab kita takmau mereka jadi pengawal kepada UMNO. Pengawal keselamatan Negara, pengawal rakyat, pengawal perlembagaan itu sewajarnya peranan yang dimainkan oleh pihak keselamatan. Dan hadirin sekalian, kita tengok perhimpunan bersih apa yang berlaku??? Polis yang buat rusuhan, bukan rakyat!!! Betul kah?? Tembak sana, tembak sini ... Mati orang ohh semua pura-pura ... Saya pura-pura duduk atas kerusi. Baharudin tuh pura-pura mati ... ai dia tak mati tuuu ... Hangpa pi tengok di rumah diaa??? La dok ada tuh ... pura-pura mati ... pengawal Anwar Ibrahim tu ... pura-pura pecah tulang pipi ... pemuda kita dari Balik Pulau tu ... pura-pura hilang gigi sebelas batang ... kelongsong peluru tu masuk kot mulut ... di tembak thumbbbb ... patah semua depan nii ...

Hadirin sekalian,

Dan walaupun kita begitu, saya tetap rasional ... iaitu pasukan keselamatan boleh lagi buat perubahan. Kembali kepada tugas secara professional. Ini kehendak sekarang bukan kehendak rakyat tahun 60-an. Rakyat sekarang, rakyat Twitter, rakyat Facebook, tak boleh tipu ... Ohhh ... Kami tidak melaku kezaliman ... Rakyat dilayan dengan baik ... Hadirin sekalian, zaman sekarang orang pi tunjuk perasaan bawa iPad, bawa Blackberry, prommm dihantar pada kawan dia hantar ke seluruh dunia, semua orang nak tengok. Penyepak kena tendang kena cekik. Hak polis punya, dua minggu baru tunjuk. Eee ... Heiii ... 2 minggu mesti la hangpa pinda ... Betul kah?? Sebab tuh la dia boleh tipu orang-orang dalam ... siaran-siaran

tuh, orang Parit, Pahat, orang dalam nuuu ... Orang Selama, orang sebelah Ijok. Tuh pun Ijok ada internet da la ni ... Jadi, orang nak tengok kadang tu jadi tak boleh ... Sekarang rakyat nak pembaharuan. Ini yang Professor Shamsul Amri mengatakan SPR dan kerajaan kena sedia buat perubahan kerana perubahan yang berlaku pada rakyat. Hadirin sekalian, kalau menang pilihanraya yang kedua, tapi kita nak pilihanraya adil, kita kata bersih daftar pemilih. Pengerusi SPR, timbalan kata, mana ada!!! Pembangkang bohong!! Nama daftar yang tidak betul ... sekarang saya kata tadi, zaman komputer, zaman internet, zaman IT, pemuda kita cari-cari jumpa 17 ribu lebih. Nama yang dua kali berulang, ada pulak di Selangor ... Hadirin sekalian, rumah 35, 37, 39 rumah takat tu ... Pengundi dia ada lagi rumah 40, 41, 43, rumah takdak pengundi penuh ... dibuktikan oleh kita PAS dan Pakatan Rakyat di Selangor. Bagaimana takdak rumah, didaftarkan di rumah-rumah hantu??? Berdebat dan berjumpa dengan beliau akhirnya, sekarang mereka mengaku, banyak daftar pemilih tak betul ... Ahhh, bukan soal kalah menang, soalnya kalau kita menang pun takpa, BN kalah pun takpa ... Tapi yang penting kita nak pilihanraya yang adil dan saksama. Ini yang kita lihat nismar bagaimana dia jadi warganegara 10 pagi, 4 petang da jadi pengundi sedangkan kita kena ambik borang, kena hantar, kena pergi ke pejabat pos nak daftar jadi pemilih. Warga asing begitu mudah, kerana apa? Agen SPR dan agen pendaftaran Negara buat kerja ... daftar mereka ni sebagai pemilih untuk membenarkan UMNO dan Barisan Nasional seperti yang dibuat di Sabah ... Sekarang terserah pada dunia, tuntutan bersih tu betul, tak dapat lari dah ... dan baru ni saya dipanggil ... saya Nurul Izzah, Tan Seng Jiaw ... Saya pun dipanggil kerana Timbalan Menteri Luar German datang melawat dan dia jumpa kami ... Saya pergilah ... Jumpa di Pejabat Duta Jerman ... kita telah terangkan pilihanraya di Malaysia kepada mereka ... bukan soal siapa menang siapa kalah, tapi cara pilihanraya tidak betul. Media yang tidak betul, kami tidak boleh memberi penerangan seperti di Negara tuan. Dia kata Negara-negara barat yang menjalankan demokrasi kita nak mintak Malaysia keluar dari alam kolot, kuno, konservatif, lepas tuh hadirin sekalian saya dengar-dengar umum, nak tubuhkan jawatankuasa select komuniti barangkali cadangan dari Negara orang putih ni lee ... dan pemimpin mereka datang ni Raja Jerman, diantaranya dia kata, dia nak jumpa kerajaan, dia nak jumpa NGO, nak jumpa juga Pakatan Rakyat ... dan salah seorang tentulah aku ... Hadirin sekalian, bukan kita nak ciplak perlembagaan, tidakkk ... tapi kita nak pilihanraya yang adil. Kalau pilihanraya adil BN menang, menang lahh ... Kalau kita menang pun takpalahh ... pentingnya, pilihanraya yang adil, media yang adil ... Ini tuntutan kita yang perlu dengar. Sekarang ini. Walau mereka buat ke dak, tapi mereka da akui, dua hari lepas, pengerusi SPR mengatakan secara rasmi, keluarkan televisyen semua. Dia sanggup untuk bertemu sekali lagi dengan jawatankuasa bersih yang sebulan dulu mereka kata haram ... Sekarang nak bertemu bersih inilah hadirin sekalian. Sebab tuh, sampul raya. Jabatan Luthnah, Mahfuz Omar, Datuk Mahfuz Omar, kempen. Mari kita menentang BN. BN tuh barang naik, saya melancarkan semalam di Kampung Baru, Kuala Lumpur. Tempat Allaharmah Dr Lo Lo sampul raya tuh kita tak tulis bersih. Kita tulis tidak kotor, ahhh ... Jadi hadirin sekalian, kita lihat kita sekarang nih ... Select komuniti tiba-tiba dia kata. Pilihanraya boleh buat bila-bila masa sahaja, tak perlu tunggu keputusan. Select komuniti ataupun jawatankuasa pemilihan khas untuk mengkaji hal sistem pilihanraya di Malaysia. Bila buat begitu saya tak tahu nak panggil mesyuarat 24 haribulan, nak adakan pemilihan Pakatan Rakyat. Ahli parlimen kita perlu atau tidak duduk dalam jawatankuasa itu. Najib main-main kita nampak??

Walaupun pihak SPR kita nampak dia dah terkona dah, dia rasa nampak sedikit. Ada kesungguhan, untuk mendengar pandangan bersih. Terutama hal daftar pemilih, dia pemuda kita, Suhailan Jaya seorang pemuda kita yang bijak dalam komputer sebab dia bekas pensyarah. Dia dapati hadirin sekalian di Johor, banyak ahli UMNO daftar pengundi boleh mengundi 2 kali. Kemudian dapati dalam tentera, dia bawa beberapa orang bekas pegawai tentera, buat dalam press conference pegawai tentera itu berkata, 'mereka itulah yang menipu undi pada pilihanraya dulu'. Pangkah bagi pihak kawan-kawan yang lain. Menyeru membuat pengakuan didalam Surat Khabar Harakah yang mereka dulu pangkah untuk kawan-lawan yang lain. Tiba-tiba Ketua Tentera Malaysia keluar kenyataan tak mengaku, kerana ia berlaku dengan adil. Saya tidak mahu kata adil atau tak berlaku. Ketua turus tentera, tidak boleh terlibat dalam politik kepartian. Setuju atau tidak??? Kalau ada tuduhan, Menteri Pertahanan atau Timbalan Menteri Pertahanan kena jawab atau SPR??? Bukan tentera yang beruniform ... Sekali lagi Najib dah buat silap. Mengajak tentera dalam politik kepartian ini. Ini cukup silap!!! Saya yakin kesilapan mereka itu sedar. Saya dengan saja keadaan itu. Saya pergi hari tu, kebetulan mesyuarat PBA. Saya mintak Yang Berhormat Lim Guan Eng, pejabatnya tolong panggil wartawan. Saya nak buat press conference. Saya nak tegur kesilapan yang dilakukan oleh pegawai turus angkatan tentera. Kalau ada tak puas hati, mesti Menteri Pertahanan jawab, SPR jawab, bukan pasukan uniform. Kerana tentera ia wajib berkecuali. Kerana tentera berkhidmat dibawah Yang Dipertuan Agong. Betul ka tidakk??? Ni Najib ni buat silap banyak nii ... ni tak kena ... Sebab hadirin sekalian, kalau tentera terlibat dalam politik kepartian, rosak habis Malaysia ni ... dan kita harap kejadian yang berlaku 3, 4 hari lepas. Cukup takat tuh ... Jangan ulang lagi ... ada benda tak puashati, mengadu Menteri Pertahanan atau SPR akan jawab. Bukan pihak tentera sendiri. Kalau mereka yang menjawabnya, ia akan jadi politik kepartian, yang tidak sihat sejak merdeka hingga sekarang. Tentera di sanjung tinggi. Penghormatan kepada mereka tinggi. Dan mereka berkhidmat dengan dibawah panji-panji Yang Dipertuan Agong, bukan bawah UMNO, bukan bawah PAS, bukan bawah sesiapa. Mereka di bawah panji Seri Paduka Yang Dipertuan Agong.

Hadirin yang dihormati sekalian ... ni kita lihat, kepincangan ... hal pilihanraya yang sekarang menjadi bahan perbincangan umum. Bersih tahun ni, perhimpunan di Kuala Lumpur. Saya ucap tahniah pada tuan-tuan, disekat macam mana pun, berpuluh ribu, ratus ribu yang hadir. Bahkan di seluruh dunia kali ni paling banyak 35 tempat berlaku perhimpunan serentak. Di Melbourne, di Sydney, di Brisbane, di London, di New York, di Kemboja, ada di Dubai, di Kaherah, berlaku 35 tempat. Cuma di England tunjuk perasaan tak da masalah. Rusuhan tak boleh lah ... Sekarang ni Timbalan Ketua Polis, cuba sama kan tunjuk perasaan dengan rusuhan. Itu tak betul, rusuhan bakaq kereta, rompak bank, rompak kedai ... Itu kita pun tak setuju ... Kalau ada yang buat macam tu ... kita dengan bergabung tenaga polis ligan puak-puak ni s ... Setuju ka tak??? Kita tak mau, kita mau aman. Di England, tunjuk perasaan aman pelajar Malaysia menyanyi lagu Yellow Sub Merin, Yellow Sub Merin, Yellow Sub Merin dengan polis-polis semua menyanyi. Jadi masalah sub merin ni masalah kapal selam yang di beli yang perbicaraannya akan berlangsung bermula, bulan 9 ni. Di Paris, tentang rasuah penyelewengan yang saya dah terang dah di banyak tempat. Yang saya nak sebut disini, hadirin sekalian, kesedaran untuk mintak pilihanraya adil sekarang ni adalah tuntutan rakyat dan dalam UMNO

pulak, semakin hari semakin berpecah. Sekarang lahir pulak kumpulan amanah merdeka. Yang Berhormat diketuai oleh Yang Amat Mulia Tengku Razaleigh Hamzah.

Amanah merdeka ni, salah seorang bekas menteri yang duduk dalam jawatankuasa itu, dia jumpa orang kita. Dia kata wajib jatuhkan kerajaan BN pilihanraya ke 13. Wajib jatuhkan. Dia bekas menteri tapi masih UMNO. Saya kata nak tolong kami ka, masa yang akan datang. Tentu sekarang orang Islam dia tak peduli. Bila kita cerita Rosmah, disebut oleh pegawai Kastam, dapat gambaq cincin 24 juta, cuba tuan-tuan bercakap pada orang Cina. Sebut pasal cincin 24 juta, 'Aiiyaa ... mana dia angkat itu wang aaa ... Wa senili talak apa oo ... Kalau dia curi wang kita, ini tidak boleh ... Melayu!!! Kita cerita Rosmah ada cincin 24 juta, dia diam buat-buat kenyang makan balik dari surau ... Buat bodoh ja ... Kita cerita rumah Najib bil ayaq 30 ribu sebulan, dia tak rasa, Melayu tak rasa apa ... Cina marah ... 30 ribu nih hang mandi apa??? Orang ka badak mandi?? Dia suruh rakyat berjimat ... kita harga ayam naik, tepung naik, gula naik ... wang 28 ribu juta hilang ... hospital tak cukup pakar ... yang tu tak cukup ... yang ni tak cukup ... duit dah hilang ... tapi kita cerita pada orang melayu ... tak sensitive, betul ka tak ni?? Bek tu sekarang ni mainkan isu perkauman nak pertahankan undi orang melayu kepada UMNO dan BN? Cina takdalah ... India pun serupa aih ... India pun dah balik kat kita ... Cina kalau sebut, sebut dacing pun?? Uerghhh ... Dia tak mau langsung dah laa ... tapi Melayu dia tak sensitive bila cerita hal penyelewengan ...

Hadirin sekalian, kita harap kita balik pada perjuangan asal perjuangan Islam ... terutama di bawah Nabi Muhammad SAW, para sahabat baginda yang terkemudian ... iaitu amal mahruf nahi mungkar yang disebut oleh Datuk Dr Mahfuz tadi ... Mesti kita hidupkan ... walaupun yang memerintah nanti, kerajaan Pakatan Rakyat ... Kalau berlaku penyelewengan, rakyat akan bangun diatas sifat amal mahruf nahi mungkar ... untuk kita menuntut keadilan ... Setakat nilah ucapan hadirin sekalian, kita harap pilihanraya akan datang, kita mahu parlimen Kepala Batas, Tasek Gelugor, parlimen yang belum menang ini kita akan mencapai kemenangan untuk buat perubahan di peringkat Putrajaya.

Wassalamualaikum warahmatullahiwabarakatuh ...

[4] After having read the record of appeal and written submission filed by the parties, I heard counsel on 16 February 2017. I thereafter adjourned the appeal for detail consideration of the arguments advanced by counsel.

[5] I now furnish my decision hereinbelow together with my supporting grounds thereto.

SALIENT FACTS

[6] The accused was the former Deputy President of the Pan-Malaysian Islamic Party ('PAS') and is presently the President of the Parti Amanah Negara ('Amanah').

A **[7]** On the night of 21 August 2011, the accused made a public political speech at an open space in front of the Pusat Asuhan Tadika Islam ('PASTI') Al-Fahmi, Markas Tarbiyah PAS, Padang Menora, Tasek Gelugor, Penang. The whole political speech of the accused is found in the charge annexure.

B **[8]** The aforesaid political speech was subsequently televised in TV3 and reported in the front page headline of the *Utusan Malaysia* newspaper under the caption 'Mat Sabu Hina Pejuang' on 27 August 2011.

C **[9]** The detailed report in the *Utusan Malaysia* is found in p 5 of the newspaper ('article') which reads as follows:

> KUALA LUMPUR 26 Ogos — Timbalan Presiden Pas, Mohamad Sabu mencetuskan kontroversi baru apabila menganggap pengganas dalam Kompeni Pasukan Ke-4 Parti Komunis Malaya (PKM) yang menyerang dan membunuh
> D anggota keselamatan dan keluarga mereka dalam tragedi Bukit Kepong sebagai hero sebenar.
>
> Menurutnya, Muhammad Indera, lekaki Melayu yang bersekongkol dengan Goh Peng Tun dan 200 anggota komunis adalah hero sebenar, bukannya anggota polis dan keluarga mereka yang mempertahankan diri dalam serangan di balai polis itu.
>
> E Dalam ceramahnya di Tasek Gelugor, Pulau Pinang 21 Ogos lalu, Mohamad turut mendakwa Dato' Onn Jaafar dan Tunku Abdul Rahman tidak layak dianggap sebagai pejuang kemerdekaan kerana tokoh tersebut adalah pegawai British.
>
> Beliau juga berikrar untuk mengubah semula sejarah kemerdekaan Negara jika
> F pembangkang berjaya merampas Putrajaya kerana dakwanya, sejarah yang tertulis pada hari ini tidak memaparkan fakta sebenar selain hanya memihak kepada UMNO.
>
> 'Dekat nak merdeka nanti, siarlah cerita mengenai Bukit Kepong. Bukit Kepong ini, polis yang mati itu British. Hat (yang) serang Bukit Kepong itulah pejuang
> G kemerdekaan yang sebenar, yang serang Bukit Kepong itu Mat Indra (Muhammad Indera). Dia Melayu tapi semua sejarah itu ditutup'.
>
> 'Jins Shamsudin (Tan Sri) buat filem, Jim Shamsudin itu orang UMNO. Cerita Bukit Kepong (yang diperbuat Jins) hat yang serang itu pula penjahat, hero yang mempertahankan balai polis. Padahal Mat Indera yang mengetuai operasi itu
> H ahkirnya dihukum gantung,' katanya dalam ceramah itu.
>
> Dalam tragedi berdarah Bukit Kepong yang bermula kira-kira pukul 5 pagi pada 23 Februari 1950, satu persatu anggota keselamatan dan ahli keluarga mereka gugur selepas diserang dari setiap sudut oleh 200 pengganas komunis, malah sebahagian daripada mangsa dicampak hidup-hidup ke dalam api.
>
> I Mohamad mendakwa semua sejarah Negara adalah bohong apabila pegawai British diangkat sebagai pejuang kemerdekaaan manakala yang melawan British menjadi penjahat.
>
> 'Semua sejarah negara kita bohong, pegawai British jadi pejuang kemerdekaan, lawan British jadi penjahat. Siapa pegawai British? Dato' Onn dan Tunku Abdul

Rahman itulah pegawai British. Tapi bila tiba bulan merdeka hanya mereka yang ditonjolkan. Kalau begitu UMNO seorang sajalah yang merdeka, betul tidak,' tuduhnya.

[10] Consequently, Visvanatahan a/l Muthu ('PW1') lodged a police report against the accused on 27 August 2011 after reading the *Utusan Malaysia* newspaper. Nazir bin Yusoff ('PW5') lodged a similar police report on 21 August 2011 after watching the TV3 evening news. A Hj Saidin bin Abdul Rahman also lodged a similar police report on behalf of Azlah bt Jaafar ('PW10') on 10 September 2011.

[11] After investigations were carried out by the police, the accused was charged on 15 September 2011.

SUBMISSION OF THE PROSECUTION

[12] The public prosecutor submitted that the learned sessions court judged erred both in fact and and law when he acquitted the accused after only evaluating the testimony of Mohd Asron bin Mustapha ('PW7'), the journalist of *Utusan Malaysia* and the article written by him without taking into consideration the other evidence adduced by the prosecution. The learned sessions court judge further erred both in fact and law by concluding that the context of the political speech of the accused concerned the struggle for independence and the accused did not allude to the communist as national warriors or heros. According to the public prosecutor, the accused unequivocally stated in his speech that the attack of Bukit Kepong was headed by Mat Indera. The prosecution had further adduced sufficient evidence that the attackers were communists. Consequently, the learned sessions court judge misdirected himself and his decision ought to be set aside following *Goh Ming Han v Public Prosecutor* [2015] 3 MLJ 781; [2015] 3 CLJ 17 and *Ti Chuee Hiang v Public Prosecutor* [1995] 2 MLJ 433; [1995] 3 CLJ 1.

[13] In addition, the public prosecutor submitted that the learned sessions court judge erred both in fact and law when he concluded that the political speech was grounded upon the expert views of historian Professor Ramlah Adam in his book *Pengukir Nama Johor* when Professor Ramlah Adam wasn't the author of the book. That aside, the learned sessions court judge contradicted himself when he also acknowleged that there were two differing views on the role of Mat Indera in that Bukit Kepong incident. Consequently, the learned sessions court judge also erred in fact and law when he found that the elements of defamation were not made out because there are differing views on the Bukit Kepong incident by different historians. According to the public prosecutor, it is unnecessary to delve into the history of the Bukit Kepong incident as held in *Mohamad Sabu v Public Prosecutor* [2013] 2 CLJ 168. By so

doing, the learned sessions court judge again misdirected himself.

[14] Finally, the public prosecutor submitted that the learned sessions court judge erred both in fact and law when he found that prosecution failed to prove its case because the prosecution witnesses who complained to the police based their complaint on the article or viewing the televised speech of the accused on TV3 without they personally hearing the speech from the accused at the public lecture. According to the learned sessions court judge, the article and the televised speech were not accurate depiction of the speech of the accused. The public prosecutor argued that it is neither neccessary for the complainants to have heard the speech personally nor were the article and the televised speech materially inaccurate. Again by having so found, the learned sessions court judge seriously misdirected himself.

REPLY SUBMISSION OF THE ACCUSED

[15] First and foremost, the accused contended that both the main charge and the alternative charge are defective and do not disclose any offence on the part of the accused. In the premises and that notwithstanding, it is apparent that the learned sessions court judge did not consider the same in his grounds of judgment, the acquittal of the accused must be upheld for this very reason in limine.

[16] Furthermore and in reply to the public prosecutor', the accused submitted that the learned sessions court judge had plainly considered all the evidence adduced by the prosecution and submission of both parties. As to the contents of the political speech, the accused contended that the learned sessions court judge rightly concluded that it was plainly made in the context of the struggle for independence. Therefore it is neither defamatory nor offensive pursuant to s 499 and punishable pursuant to s 500 of the Penal Code respectively.

[17] In respect of the learned sessions court judge's reliance on the expert views of historian Professor Ramlah Adam in his book *Pengukir Nama Johor* which was in fact not authored by him, the accused submitted that that was a mere misquotation that does not tantamount to misdirection. As to the role of Mat Indera in that Bukit Kepong incident, the learned sessions court judge was correct in that there are in fact mixed views amongst historians. There are historians who have positive opinion on the involvement of Mat Indera in the Bukit Kepong incident. The learned sessions court judge rightly considered those views in light of s 182(A) of the Criminal Procedure Code.

[18] Finally, the accused submitted that the learned sessions court judge was right in concluding that the article and televised TV3 broadcast relied upon by

the complainants materially differed from that uttered by the accused in his political speech as a whole. In the premises, it was not only necessary but essential that the complainants must have personally heard the political speech. The actionable utterances must not only be the actual words but also the context in which they were spoken.

FINDINGS OF THE COURT

[19] My appellate function pursuant to s 316 of the Criminal Procedure Code is neatly encapsulated by Zawawi Salleh JCA as follows in the Court of Appeal case of *Mohd Yusri bin Mangsor & Anor v Public Prosecutor and another appeal* [2014] 4 MLJ 875 at p 882:

> [4] ... We have also scrutinised the records available before us. We are mindful that this is a factual based appeal. It is trite that an appellate court will be slow to interfere with the findings of facts and judicial appreciation of the facts by the trial court to which the law entrusts the primary task of evaluation of the evidence. However, there are exceptions. Where:
>
> (a) the judgment is based upon a wrong premise of fact or of law;
>
> (b) there was insufficient judicial appreciation by the trial judge of the evidence of circumstances placed before him;
>
> (c) the trial judge has completely overlooked the inherent probabilities of the case;
>
> (d) that the course of events affirmed by the trial judge could not have occurred;
>
> (e) the trial judge had made an unwarranted deduction based on faulty judicial reasoning from admitted or established facts; or
>
> (f) the trial judge had so fundamentally misdirected himself that one may safely say that no reasonable court which had properly directed itself and asked the correct questions would have arrived at the same conclusion, then an appellate court will intervene to rectify that error so that injustice is not occasioned (see *Perembun (M) Sdn Bhd v Conlay Construction Sdn Bhd* [2012] 4 MLJ 149 (CA); *Sivalingam a/l Periasamy v Periasamy & Anor* [1995] 3 MLJ 395; [1996] 4 CLJ 545 (CA)).

[20] I will firstly deal with the accused's challenge that both charges are defective and do not disclose any offence on the part of the accused. It is appropriate at this point to cite ss 499 and 500 of the Penal Code upon which the charges were preferred. They read as follows with emphasis added by me:

> 499 Defamation
>
> *Whoever, by words either spoken or intended to be read or by signs, or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm the*

reputation and shall also be liable to fine of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1 — It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2 — It may amount to defamation to make an imputation concerning a company, or an association or collection of persons as such.

Explanation 3 — An imputation in the form of an alternative, or expressed ironically, may amount to defamation.

Explanation 4 — No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations

(a) A says — 'Z is an honest man; he never stole B's watch'; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it falls within one of the exceptions.

(b) A is asked who stole B's watch. A point to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

First Exception — It is not defamation to impute anything which is true concerning any person, if it is for the public good that the imputation should be made or published. Whether or not it is for the public good is and shall also be liable to fine a question of fact.

Second Exception — It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception — It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Illustration

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such a meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties in which the public is interested.

Fourth Exception — It is not defamation to publish a substantially true report of the proceedings of a Court, or of any Legislative Assembly, or of the result of any such proceedings.

Explanation — A Justice of the Peace or other officer holding an inquiry in open Court preliminary to a trial in a Court, is a Court within the meaning of the above section.

Fifth Exception — It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations

(a) A says — 'I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest'. A is within this exception if he says this in good faith; in as much as the opinion which he expresses respects Z's character as it appear s in Z's conduct as a witness, and no further.

(b) But if A says — 'I do not believe what Z asserted at that trial, because I know him to be a man without veracity'. A is not within this exception, in as much as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

Sixth Exception — It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation — A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z — 'Z's book is foolish, Z must be a weak man. Z's book is in decent, Z must be a man of impure mind'. A is within this exception, if he says this in good faith, in as much as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says — 'I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine'. A is not within this exception, in as much as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception — It is not defamation in a person having over another any authority, either conferred by law, or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration

A Judge censuring in good faith the conduct of a witness or of an officer of the Court; a Head of a Department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier-are within this exception.

Eighth Exception — It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation.

Illustration

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father-A is within this exception.

Ninth Exception — It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Illustrations

(a) A, a shopkeeper, says to B, who manages his business — 'Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty'. A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith and for the public good, A is within the exception.

Tenth Exception — It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

In proving the existence of circumstances as a defence under the 2nd, 3rd, 5th, 6th, 7th, 8th, 9th, or 10th exception, good faith shall be presumed unless the contrary appears.

500 Punishment for defamation

Whoever defames another shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

[21] I will deal at the outset with the contentions of the accused that the charges are defective and do not disclose any offence on the part of accused.

The learned sessions court judge did not deal with these contentions in his grounds of judgment nothwithstanding that they were raised by the accused at the close of the prosecution case.

[22] In this regard, the acccused referred to the case of *Aw Yang Kee Chuan lwn Pendakwa Raya* [1992] 1 CLJ Rep 398 where Abdul Aziz Mohamad J (later FCJ) held as follows:

> Terlebih dahulu saya perlu menegur bahawa pertuduhan pilihan terhadap perayu, iaitu pertuduhan di bawah mana dia disabitkan, tidak menyebut satu unsur penting bagi kesalahan di bawah s 411 Kanun Keseksaan, iaitu unsur mengetahui atau mempunyai sebab untuk mempercayai barang yang berkenaan itu barang curi. Majistret-majistret hendaklah mengambil berat memastikan sesuatu pertuduhan itu menyebut setiap unsur (*ingredient*) bagi sesuatu kesalahan oleh kerana, jika mana-mana unsur tidak disebut, pertuduhan itu akan gagal memperlihatkan kesalahan.

Furthermore Hamid Sultan JC (now JCA) held as follows in *Public Prosecutor v Chung Tshun Tin & Ors* [2008] 1 MLJ 559:

> [20] It is a fundamental principle of criminal law that the accused should be informed with certainty and accuracy, the exact nature of the charge brought against him, otherwise he may be severely prejudiced in his defence. He can be convicted only on proof of particular offence so specified. For this purpose, the judge cannot go beyond the exact wording of the charge in finding the accused guilty ...

In *Uthayakumar a/l Ponnusamy v Public Prosecutor* [2003] 5 MLJ 433 that pertains to a criminal intimidation charge under ss 503 and 506 of the Penal Code which reads:

> 503 Criminal Intimidation
>
> Whoever threatens another with injury to his persons, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.
>
> *Explanation — A threat to injure the reputation of any deceased person in whom the person threatened is interested, is with in this section.*
>
> 506 Punishment for criminal intimidation
>
> Whoever commits the offence of criminal intimidation shall be punished with imprisonment for a term which may extend to two years or with find or with both; if the threat is to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.

Suriyadi J (now FCJ) held as follows with emphasis added:

A close scrutiny of s 506 will reveal that there are two sets or limbs of intimidation, namely simple intimidation or a more serious version where, among others, the threat to life or property is involved. The latter naturally carries a heavier sentence. A semi colon delineates the two sets. Regretfully, the charge against the applicant had failed to identify under which limb or set he was charged with, as it merely ingrained that he had committed an offence under s 506. As the charge had not clarified whether the threat was to cause death, grievous hurt, destruction of property by fire, or to cause an offence punishable with death or imprisonment, then in the minimum, the applicant was being charged for the lighter limb (first). Regardless of my construction, it is cold comfort for the applicant, as that uncertainty will not assist him when preparing his case. *It cannot be overstated that a charge must be certain in all cases, as otherwise an accused person will be left guessing, and prejudicially embarrassed not knowing what he had contravened or how to counter the allegations* (*Public Prosecutor v Teoh Choon Teck* [1963] 1 MLJ 34; *Yoh Meng Heng v Public Prosecutor* [1970] 1 MLJ 14). Hashim Yeop A Sani J, as he then was, in *Public Prosecutor v Yap Kok Meng* [1974] 1 MLJ 108 had remarked at p 109:

> *It is fundamental in the system of justice as we know it that a person accused of a criminal offence must be informed clearly of the charge against him. … It is a fundamental rule that an allegation must be stated with sufficient precision to enable the accused to meet the allegation and properly prepare his defence.*

Under s 503 of the Penal Code*, to qualify even as a simple criminal intimidation (under the first limb), not only must there be the actus reus, in the like of injuring a person, his reputation or property, or to the person or reputation of anyone in whom that person is interested, but also the mens rea. The latter will be in the form of intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, etc. In other words, to fall within the ambit of this section, regardless of the limb under which an accused is charged, both legal ingredients must be present.*

Ratanlal & Dhirajlal's *Law of Crimes* endorsed the division, where at p 2576 it authored:

> This section defines comprehensively 'criminal intimidation'. Section 506 provides penalty for it. This section is in two parts: the first part refers to the act …; *while the second refers to the intent* …. (Emphasis added.)

RP Kathuria in *The Law of Crimes and Criminology*, at p 4012 had occasion to comment:

> Intent specified in the section is also an essential ingredient of the offence and must be established by evidence and must be found as a fact.

This same author had the following, as a specimen charge:

> That you, on or about … at … committed criminal intimidation by threatening A with injury to his person (reputation or property) (specify which) in whom A is interested (state how interested) (*actus reus — mine*) with intent (*mens rea — mine*) to cause alarm to A or to cause him to do an act which he is legally bound to do (or to cause him to omit to do an act which he is legally bound to do) (specify the act) and thereby committed an offence punishable under s 506 IPC (Indian Penal Code) and within my cognisance. (Emphasis added.)

At p 2597 of Ratanlal & Dhirajlal's *Law of Crimes* is found a specimen of a s 506 charge, quite similar to the above and appears as follows:

> That you, on or about the ... day of ..., at ..., *committed criminal intimidation by threatening AB with injury* (actus reus — mine) to his person (or reputation, or property) with intent (mens rea — mine) to cause alarm to the said AB (or to cause him to do (specify the act intended to be done) or to omit (specify the act intended to be omitted)); and thereby committed an offence punishable under s 506 of the Indian Penal Code, and within my cognisance (or cognisance of the Court of Session). (Emphasis added.)

It is quite obvious that the above specimens not only had included the actus reus but also the mens rea. In comparison to the above example proffered by Ratanlal and RP Kathuria, the charge facing the applicant clearly had missed the second ingredient of intent or mens rea. To regurgitate, not only was the charge unclear as to whether the applicant was charged for an offence under the first or the second limb, but there was failure to insert the mens rea ingredient even had he been charged under the lighter limb, let alone the heavier one. The latter would certainly not know whether the missing mens rea was with an intent to cause alarm to that person, to cause that person to do any act which he is not legally bound to do, etc or what. Had it been for the heavier one, he would be wondering whether he was being charged with criminal intimidation intending to cause death, grievous hurt, destruction of property by fire, etc ...

I could not help but conclude that apart from the charge of section 506 being factually incorrect, it was also badly drafted, which would certainly prejudice the rights of the applicant.

[23] Thus according to the accused, both charges are fatally flawed in that they did not incorporate the essential ingredients of the offence under s 499 of the Penal Code that resulted in depriving the accused of knowing the case he has to face precisely.

[24] In Ratanlal & Dhirajlal's *Law of Crimes* (25th Ed), a sample charge under the equivalent ss 499 and 500 of the Indian Penal Code ('sample charge') reads as follows at p 2569:

> I (name and office of magistrate, etc.) hereby charge you (name of accused) as follows:
>
> That you, on or about the __ day of __ —, defamed AB, by making or publishing to CD a certain imputation concering the said AB, to wit __ (state the defamatory matter), by means of spoken words (or writing or signs or visible representations), intending to harm, (or knowing or having reason to believe that such imputation would harm) the reputation of the said AB; and thereby committed an offence punishable under section 500 of the Indian Penal Code, and within my cognizance.
>
> And I hereby direct that you be tried on the said charge.

[25] By direct comparison of the sample charge with both the charges, it is plain to me that both charges are deficient in certain material particulars that form the basis of the offence committed by the accused. With regard to the main charge, the precise identity of the person(s) harmed is not disclosed. The accused was hence unfairly left to guess what or who exactly he had allegedly defamed and to prepare his defence accordingly. As to the alternative charge, it is not disclosed that PC37 Constable Marin Abu Bakar Daud, PC8600 Constable Jaafar Bin Hassan and PC7625 Yusoff Rono are dead as required by Explanation 1 to s 499 of the Penal Code. I also observed the mens rea that is specified in the alternative charge is of the accused knowing that his political speech will injure the reputation of the three police officers and their family. It is my view that the mens rea as specified will not support the offence because the mens rea must be intending to hurt the feelings (not reputation) of the family since the police officers are all deceased besides also injuring the reputation of those officers (if living); see also *Parwari v Emperor* 49 Ind Cas 855; AIR 1919 Allahabad 276.

[26] It is provided as follows in ss 153(1), 154 and 156 of the Criminal Procedure Code:

> 153 Particulars as to place, time and person
>
> (1) The charge shall contain such particulars as to the time and place of the alleged offence and the person, if any, against whom or the thing, if any, in respect of which it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged.
>
> 154 When manner for committing offence must be stated
>
> When the nature of the case is such that the particulars mentioned in sections 152 and 153 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.
>
> Illustrations
>
> (a) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.
>
> (b) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.
>
> (c) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.
>
> (d) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.
>
> (e) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(f) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

156 Effects of error

No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars shall be regarded, at any stage of the case, as material unless the accused was in fact misled by that error or omission.

Illustrations

(a) A is charged under section 242 of the Penal Code with 'having been in possession of counterfeit coin, having known at the time when he became possessed of it that the coin was counterfeit' the word 'fraudulently' being omitted in the charge. Unless it appears that A was in fact misled by this omission the error shall not be regarded as material.

(b) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(c) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from these facts that the omission to set out the manner of the cheating was, in this case, a material error.

(d) A is charged with the murder of John Smith on the 6 June, 1910. In fact the murdered person's name was James Smith and the date of the murder was the 5 June, 1910. A was never charged with any murder but one, and had heard the inquiry before the Magistrate which referred exclusively to the case of James Smith. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(e) A was charged with murdering James Smith on the 5 June, 1910, and John Smith (who tried to arrest him for that murder) on the 6 June, 1910. When charged for the murder of James Smith he was tried for the murder of John Smith. The witnesses present in his defence were witnesses in the case of James Smith. The Court may infer from this that A was misled and that the error was material.

[27] In the Federal Court case of *Ravindran a/l Ramasamy v Public Prosecutor* [2015] 6 MLJ 509; [2015] 3 CLJ 421, Jeffery Tan FCJ held as follows with emphasis added by me:

[28] It could also be noted that the 'error' alluded to in s 156 of the CPC is the error in stating the offence or the particulars required to be stated in the charge, and not the error in stating the ingredients of an offence. That important distinction, whether an error in stating the particulars or an error in stating the ingredients, must

be drawn for the purposes of ss 156 and or 422 of the CPC. This is because where it was an error or omission in stating the ingredients of an offence, it had been consistently held by the courts that the accused would have been misled and that there must have been a failure of justice. *Low Seng Wah v Public Prosecutor* [1962] 1 MLJ 107, was the exceptional case, where Neal J held that the omission of an essential ingredient in the charge was not fatal, because of the unique provisions of s 321 of the CPC (since repealed) which provided that 'No judgment, sentence or order of Magistrate's court shall be reversed or set aside unless it is shown to the satisfaction of the court of a judge that such judgment, sentence or order was either wrong in law or against the weight of the evidence'. *Low Seng Wah v Public Prosecutor*, which was primarily decided under s 321, is no precedent on s 156 of the CPC.

[29] But in cases decided primarily under ss 156 and or 422 of the CPC, courts had refused to invoke those provisions where it was an error or omission in stating the ingredients of an offence.

[30] In *Public Prosecutor v Mahfar bin Sairan* [2000] 4 MLJ 791, Kang Hwee Gee J, as he then was, drew attention to the vast difference between the ingredients of an offence as opposed to the particulars of the act, and the need to distinguish between the ingredients of an offence and its mere particulars:

> Steven A Hirsch, in an article entitled 'Yap Sing Hock v PP: Time for a Quick and Decent Burial' [1993] 3 MLJ Lexis, draws a distinction between the elements or what is more commonly described in courts as ingredients, and mere particulars and pointed out that a charge is bad only where the element specified therein had prejudiced the accused under the fair notice rule. He wrote at p lxxvii of his article which he fortified by reference to numerous case decisions, which I have no reason to doubt as correctly representing the law:
>
> > The court failed to appreciate that every criminal charge contain two distinct types of averment: (i) a recitation of or reference to the elements (or 'ingredients') of the underlying statutory offence; and (ii) particulars which are not themselves elements of the underlying offence but which 'flesh out' the details of the allege crime. The first sort of averment, as the court correctly pointed out, is subject to the rule of strict construction in favour of liberty.

[31] The other case where the court drew the distinction between particulars and ingredients was *Shawal bin Hj Mohd Yassin v Public Prosecutor* [2006] 4 MLJ 334, where it was held by Azahar Mohamed JC, as he then was, that ss 156 and 422 of the CPC only cure technical errors. Azahar Mohamed JC also enunciated on 'miscarriage of justice' and 'prejudice' in the context of ss 156 and 422 of the CPC, which enunciation we approve and now reproduce below in extenso:

> *In my view s 156 has application only in a situation where there is an error either in stating the offence or the particulars required to be stated in the charge or there is an omission to state the offence or those particulars. In other words that section provides for a cure should there be any non-compliance with the technical provisions of the law. I do not think that provision can be invoked in the case at hand in a situation where the charge was defective as disclosing no offence under the section of the Act*. I do not consider that this is an irregularity curable under s 156. In the same way, the

application of s 422 is constrained to remedy no more than technical defects in the charge. To me where a trial in the court below is conducted on the basis of a charge which is defective as not disclosing an offence under the relevant section, it is an illegality which cannot be cured by s 422. I should point out that the case of *Msimanga Lesaly v Public Prosecutor* [2005] 4 MLJ 314 relied on by the learned deputy is distinguishable on its facts ... In stark contrast to that case, in the case before me it was not a minor defect; the charge was defective as disclosing no offence in law.

The defect in the charge was a matter of substance and not merely of form. This was not a mere technical non-compliance of any provision of the law which can be condoned as an irregularity. I do not think it can be cured without causing injustice to the appellant. In my view, this was not a defect, disregarding it would not occasion a miscarriage of justice. To me the charge as framed did not disclose any offence and therefore I have no doubt that the defect of this kind was an illegality. I think the appellant was left in doubt as to the offence of which he had been convicted and sentenced. It is a fundamental principle of criminal law in our country that an accused person should know accurately of what offence he has been convicted and sentenced. In my judgment the error in the charge did cause prejudice and injustice to the appellant. In the end, I have no hesitation in saying that the charge framed against the appellant was bad in law. When looked in this way, one can see that there has been a substantial miscarriage of justice. As a consequence, the conviction in this case was a nullity.

[28] Upon careful scrutiny of both the charges as framed, it is my view for the reasons stated in para 25 above that they are defective in substance and not merely form or inadequate particulars. They hence do not disclose any offence. Put simply, they are bad in law. In the circumstances, this is per se sufficient to dismiss the appeal.

[29] Nonetheless and moving on to the public prosecutor's contention that the learned sessions court judge did not consider the evidence adduced by the prosecution in entirety, I find that to be misconceived because the learned sessions court judge has unequivocally stated in his grounds of judgment that 'Mahkamah telah membuat penilaian secara maksimum ke atas keterangan-keterangan yang dikemukakan oleh pendakwa dan meneliti hujah-hujah kedua-dua pihak'. Although the learned sessions court judge chose to focus his analysis on the evidence of PW7 particularly the article authored by him, it is in my view sensible and appropriate for the learned sessions court judge to have done so since most of the complainants, to wit: PW1 and PW10 made their complaint after having read that article. In addition, the article was available before him for review unlike the televised TV3 broadcast allegedly watched by the only other complainant PW5. Neither a video recording nor written transcript of the TV3 broadcast was adduced before the learned sessions court judge.

[30] As to the public prosecutor's contention that there was a serious misdirection by the learned sessions court judge in concluding that the political speech of the accused concerned only the struggle for independence, it is my view critical that the political speech must be examined against the criminal defamation charges preferred. Broadly speaking in undertaking such an examination, the exact utterances and the context in which the speech was made are obviously relevant. Since the speech also touched and concerned an historical event, the proper interpretation of that event is relevant. Lastly, the resultant impact of the speech upon of the complainants is relevant too.

[31] The public prosecutor has conceded that all of the following elements as held by Amelia Tee Hong Geok J in *PP v Ab Latif Muda* [2014] 1 LNS 1450 following Ratanlal & Dhirajlal's *Law of Crimes* (26th Ed) must be proved beyond reasonable doubt to convict the accused:

(i) the imputation in question consisted of words, spoken or intended to be read or of signs;

(ii) the imputation concerned the complainant;

(iii) the imputation emanated from the accused;

(iv) the accused made or published it; and

(v) the accused intended thereby to harm the reputation of the complainant or that he knew or had reason to believe that it would do so.

Elements (i)–(iv) are the actus reus whilst element (v) is the mens rea.

[32] For purposes of both charges, the public prosecutor isolated and focused the following utterances of the accused in his political speech:

(a) ... *hat serang Bukit Kepong tu lah pejuang kemerdekaan* ...;

(b) ... *cerita Bukit Kepong hat serang balai polis tu penjahat* ...;

(c) ... *negara kita diperintah oleh British tapi dibuat filem hero yang pertahan balai polis, hat serang itu pengganas*; and

(d) ... *Mat Indera ketua penyerang balai polis tu ahkirnya dihukum gantung di jail Taiping* ('impugned statements').

[33] It is my view that generally in an action for defamation; be it civil or criminal, the publication must be examined as a whole. In Keith R Evans *The Law of Defamation in Malaysia & Singapore* (2nd Ed), it is provided as follows:

> In considering whether such ordinary inferences arise from the words, the whole publication must be examined, including among other things, the context in which the words are used, the nature of the publication and the emphasis placed on any particular words.

Thus in *Binaan Sentosa Sdn Bhd v Ng In Kun & Anor* [2011] MLJU 897; [2012] 1 CLJ 232, See Mee Chun JC (now J) held as follows:

> [11] I am mindful too that in determining whether the words complained of are defamatory one must take into account not only the actual words but the context in which they were used. This is because there may be other words which take away the sting. Refer to *Soh Chun Seng v CTOS-Emr Sdn Bhd* [2004] 5 CLJ 46 ...

I am aware that I have in *Datuk Hj Shabudin Yahaya & Ors v YB Dr Afif Bahardin* [2016] 1 LNS 291 held that in a slander which is only temporary and transient in form, the need to examine the speech as a whole isn't as imperative as that in a libel. It was however a civil defamation case and the dispute concerned whether the defendant therein intended to refer to the plaintiffs which I held to be irrelevant contextually as a matter of law. It is however different in this appeal before me because intention is relevant as part of the mens rea that made up the offence as discussed in paras 25 and 31 hereinabove.

[34] There is no doubt and it does not seem also to be in dispute that the accused uttered those impugned statements. However in order to understand them in their proper context, the entire political speech as transcribed in the charge annexure has to be read (albeit, strictly speaking, listened since it was verbally uttered by the accused at the material time) in totality. I have therefore carefully read the charge annexure as a whole and I believed the learned sessions court judge did likewise. As a matter of fact, the speech encompassed several topics such as the accused's ordeal in a road accident with a police vehicle in July 2011, Merdeka Day celebrations, corruption and maladministration, BERSIH rally, the general elections, etc.

[35] After a detail review and repeated reading of the charge annexure, I understood the portion of the speech of the accused pertaining to the Merdeka Day celebrations as follows:

The accused began by noting that the thinking of Malaysians has changed. There was little display of the national flag on cars notwithstanding that the Merdeka Day was fast approaching. The accused is of the opinion that this is because of the perception that it is an UMNO celeberation.

According to the accused, the patriots of independence should all be acknowleged on television. If Tunku Abdul Rahman is acknowledged, so should Dr Burhanuddin, Ustaz Abu Bakar Al Bakhir, Dato Ahmad Boestaman and Dato Ibrahim Yaakop be acknowledged too. In other countries such as Indonesia or Thailand, the people celebrate independence day irrespective of their political divide, whether of the government or opposition political party.

The accused asserted that the Bukit Kepong film produced by Jins Shamsudin, an UMNO stalwart, will be televised on the forthcoming Merdeka Day.

A According to the accused, the Bukit Kepong police was British police and the attackers were the warriors of independence headed by Mat Indera. The Malayan police was British police till independence. The film however depicted the attackers of Bukit Kepong police station as traitors. The Malayan nation was ruled by the British but the film potrayed the defenders of the police B station as heroes and the attackers as terrorists. Mat Indera who led the attackers of the police station was finally sentenced to death by hanging in the Taiping prison. It was said in critique of the film.

The accused surmised that national history as taught by teachers of the C Ministry of Education is clothed with untruths. Hence the British officers were potrayed as patriots of independence. The opposers of the British such as Dr Burhanuddin and Rashid Mydin were instead portrayed as a traitor and communist respectively.

D **[36]** The learned sessions court judge concluded that the thrust of the impugned statements made by the accused is on the struggle for independence. I do not disagree with him. My impression is that the accused was in his speech predominantly harping on the lack of recognition accorded to the non UMNO Malay fighters of independence from the British. As to the Bukit Kepong E incident, it seems to me that he was singling out Mat Indera as one of these non UMNO Malay fighters who deserved such recognition too. I perceive the accused was lamenting that recognition was unfairly accorded only to those UMNO Malay officers aligned to the British such as Tunku Abdul Rahman. The impugned statements hence do not in this sense concern the F complainants. The complainants or their fathers who defended the Bukit Kepong police station during the incident were neither put to ridicule nor odium by the accused when seen (heard) in this context of struggle for independence. The accused did not say that the Bukit Kepong police weren't heroes. It is therefore immaterial, if not, irrelevant that many attackers of the G Bukit Kepong police station who followed Mat Indera were also communists as advanced by the prosecution.

[37] Since the context of the impugned statements in the political speech of the accused did not concern the complainants, it follows that element (ii) of the H offence as conceded to by the public prosecutor in para 31 is unmet.

[38] Now moving next to the history of the Bukit Kepong incident which has been earlier ruled by Mohd Amin Firdaus JC in *Mohamed Sabu v Public Prosecutor* [2013] 2 CLJ 168 to be justiciable, I am satisfied that the learned I sessions court judge merely misquoted Professor Ramlah Adam as the author of the *Pengukir Nama Johor* book. It does not in my opinion ipso facto become a misdirection contrary to that asserted by the public prosecutor. The learned sessions court judge was in this respect actually relying on the *Pengukir Nama Johor* book to illustrate that Mat Indera had been regarded as a known leftist

political figure aligned to the Parti Kebangsaan Melayu Malaya.

[39] After reviewing the chapter on Bajuri Hj Siraj in the *Pengukir Nama Johor* book and the testimony of Professor Emeritus Khoo Kay Kim ('PW11'), I am satisfied that there are mixed and differing views as well as perceptions amongst historians on the role of Mat Indera in respect of the Bukit Kepong incident. Consequently, my view is that the learned sessions court judge did not fall into error in so holding in his grounds of judgment. In the final analysis, it could not in my opinion be conclusively said that Mat Indera was a traitor to the nation. I am mindful that Gopal Sri Ram JCA (later FCJ) said as follows in the Federal Court case of *Public Prosecutor v Mohd Radzi bin Abu Bakar* [2005] 6 MLJ 393; [2006] 1 CLJ 457:

> ... Thus, if the prosecution evidence admits of two or more inferences, one of which is in the accused's favour, then it is the duty to draw the inference that is favourable to the accused.

[40] Finally as to the findings of the learned sessions court judge that the political speech of the accused ought to have been heard personally by the complainants and not based solely in reliance on the article as well as the televised TV3 broadcast of the speech, I am of the view that this is dependent upon the contents of the article and televised broadcast. They would be cogent evidence if they accurately depict the speech of the accused.

There is no evidence of the televised broadcast before the learned sessions court judge but he had the opportunity to compare the article with the speech. He found the article to be inaccurate.

I have personally reviewed the article and I do not disagree with him. In fact, I find that *Utusan Malaysia* had embellished and sensationalised the speech of the accused in the article particularly the caption 'Mat Sabu hina pejuang negara'. Furthermore, *Utusan Malaysia* had further done likewise in the passages found in the first, second and seventh paragraphs of the article that read:

> ... Timbalan Presiden Pas, Mohamad Sabu mencetuskan kontroversi baru apabila menganggap pengganas dalam Kompeni Pasukan ke-4 Parti Komunis Malaya (PKM) yang menyerang dan membunuh anggota keselamatan dan keluarga mereka dalam tragedi Bukit Kepong sebagai hero sebenar.
>
> Menurutnya, Muhammad Indera, lelaki Melayu yang bersekongkol dengan Goh Peng Tun dan 200 anggota komunis adalah hero sebenar, bukannya anggota polis dan keluarga mereka yang mempertahankan diri dalam serangan di balai polis itu.
>
> ...
>
> Dalam trajedi berdarah Bukit Kepong yang bermula kira-kira pukul 5 pagi pada 23 Februari 1950, satu persatu anggota keselamatan dan ahli keluarga mereka gugur selepas diserang dari setiap sudut oleh 200 pengganas komunis, malah sebahagian daripada mangsa dicampak hidup-hidup ke dalam api.

It is only natural in my view that the complainants became infuriated and reacted in the way they did after reading the article. However in fairness to the accused, these passages were never uttered by him in the speech and it is doubtful that he intended to injure the reputation or even to harm the feelings of the complainants in the way made out by *Utusan Malaysia* when he made that speech.

[41] In the premises, I am of the view the learned sessions court judge properly and correctly held that the prosecution has not sufficiently proven its case when the complainant themselves did not personally hear the political speech. It is clear to me that elements (iii) and (v) of the offence conceded to in para 31 above have hence in this regard not been established by the prosecution.

[42] Though not touched upon by the prosecution, I further noticed that the accused also alluded to the first, sixth and ninth exception to s 499 of the Penal Code. The sixth and ninth exceptions are presumed unless they appear to the contrary. The burden of proof to the contrary plainly therefore lies on the prosecution and I am not satisfied from the materials before me that the prosecution had so discharged the same.

CONCLUSION

[43] In concluding, I wish to say that I have always held the Malaysian security forces, to wit: the armed forces and police in high regard and esteem and their distinguished reputation must not be undermined or their immense contribution to the nation be belittled by irresponsible individual or groups. At the same time, I am mindful of the constitutionally guaranteed right of freedom of speech of the individual which must of course not be abused.

In this appeal on the charge of alleged criminal defamation of police officers and their family which is probably the first of its kind in Malaysia, I must, as always, ensure that justice is done to the parties in accordance with the rule of law. My duty here is nonetheless limited to review of the decision of the sessions court as to whether the accused had as a matter of fact and law transgressed his right of freedom of speech by committing criminal defamation as charged and proved by the prosecution beyond reasonable doubt under maximum evaluation following the test laid down by the Federal Court in *Balachandran v Public Prosecutor* [2005] 2 MLJ 301.

[44] Based on the aforesaid circumstances and for the foregoing reasons, I am satisfied that the learned sessions court judge rightly acquitted the accused without calling for his defence.

[45] This appeal is therefore dismissed. The decision of the sessions court dated 8 July 2015 is affirmed.

Appeal dismissed; decision of sessions court affirmed.

Reported by Dzulqarnain Ab Fatar